EXHIBIT 58

TESTIMONY
of
William Schiek
on behalf of

Dairy Institute of California

at the
Consolidated Stabilization and Marketing Plan Hearing

Ontario, California
May 6, 2005
8:30 a.m.

Mr. Hearing Officer and members of the Hearing Panel:

My name is William Schiek. I am Economist for Dairy Institute of California and I am testifying on the Institute's behalf. Dairy Institute is a trade association representing 40 dairy companies which process approximately 75% of the fluid milk, cultured, and frozen dairy products, over 60% of the cheese products, and a small percentage of the butter and nonfat milk powder processed and manufactured in the state. Member firms operate in both marketing areas in the state. The position presented at this hearing was adopted unanimously by Dairy Institute's Board of Directors.

Dairy Institute appreciates the opportunity to testify at this hearing in support of our petition to adjust California's formula for setting Class 1 prices. At issue in this hearing are proposed changes to the pricing formulas for Class 1. In establishing pricing formulas, the Secretary is directed by the legislature to weigh the factors found within statute. The California Legislature has declared that milk production and marketing is a business affected with a public interest (Sec. 61801). Therefore, the dairy programs must be operated so that the public interest is served. The public interest extends well beyond consideration of producer interests exclusively, and also includes the interests of processors, retailers, distributors and consumers. The legislature states also that it is the policy of the state to promote, foster, and encourage the intelligent production and orderly marketing of market milk and to eliminate economic waste, destructive trade practices, and improper accounting for market milk (Sec. 61802(e)).

The Secretary must consider how to set prices and pricing formulas such that **all** of the declared intentions of the legislature are met as closely as possible. In so doing, the Department must look beyond the confines of any single Section of the Code. When all relevant economic factors are considered in tandem with the specific legislative directives regarding milk pricing, it is evident that the current Stabilization and Marketing Plans for market milk no longer provide for Class 1 prices that conform with these directives; and therefore, the plans must be changed. Specifically, Class 1 prices generated by the current formulas fail to meet each of the statutory criteria in the manner listed below.

I. The prices for the various classes of milk no longer bear an economically sound and reasonable relationship to each other (Section 62062 (c)).

II. The current Plans have created a combined income that is more than necessary to insure an adequate and continuous supply of milk for all purposes (Section 62062 (a-b)).

III. The current Class 1 pricing formulas employed in the Plans do not conform pricing standards to current economic conditions (Section 61802 (g)).

IV. The current Stabilization and Marketing Plans result in prices to consumers of fluid milk products that are not fair or reasonable (Section 62062 (b)).

V. Current Class 1 prices are not in a reasonable relationship to prices in surrounding states (Section 62062.1).

VI. The current Plans fail to achieve uniformity of raw product costs to processors competing in a marketing area, even though it is the directive of the legislature that the Secretary endeavor to do so (Section 61805 (b)).

VII. The current Plans fail to promote, foster, and encourage orderly marketing and they encourage, rather than discourage, economically wasteful and inefficient milk marketing practices (Section 61802 (e-f)).

In light of some of the testimony at the May 3 hearing in Sacramento, Dairy Institute also believes it is important to consider some additional issues. First, contrary to some of the assertions made on May 3rd by producer representatives, Food and Agricultural Code Section 62062.1 does not establish the sole standard against which the Secretary must evaluate Class 1 prices. Instead, as Dairy Institute has pointed out repeatedly, both in its Petition and in its prior testimony, the Legislature has enacted a number of provisions which must all be considered in this hearing. The theme running throughout these provisions is summarized in Section 61802, one of the introductory provisions in Chapter 2 that establishes the authority under which California's Stabilization and Marketing Plans are created. In Section 61802 the Legislature makes eight declarations concerning the importance of milk and milk production in the State of California. In the last portion of subsection (h), the Legislature focuses on the need to establish minimum producer prices and declares:

> "It is further recognized by the Legislature that, in order to accomplish the purposes of this chapter and to promote the public health and welfare, it is essential to establish producer prices at fair and reasonable levels so as to generate reasonable producer incomes that will promote the intelligent and orderly marketing of milk in the various classes…."

In Article 9 of Chapter 2, the Legislature sets out the process for establishing minimum producer prices. The first substantive provision of Article 9 is Section 62062 which lists three relevant economic factors which the Secretary **must** take into consideration in establishing minimum producer prices. These are (a) the reasonableness and economic soundness of market milk prices for all classes, (b) that prices established pursuant to the Section shall insure an adequate and continuous supply of pure, fresh, wholesome market milk for all purposes, including manufacturing purposes, at prices to consumers which, when considered with relevant economic criteria are fair and reasonable, and (c) that prices established by the Secretary for the various classes of market milk bear a reasonable and sound economic relationship to each other.

It is equally significant what Article 9 does not say. No provision of Article 9 says that producer prices must be set **only** by considering prices paid to producers in contiguous states. In fact, Section 62062.1, the only Section dealing with the concept of keeping a reasonable relationship between California producer prices and those in contiguous states, follows Section 62062 and was added after Section 62062 was already in place. An evenhanded reading of 62062.1 compels a conclusion that it is intended to provide create a test the Secretary must satisfy after establishing a producer price mechanism under Section 62062. In other words, once the Secretary has considered the three broad relevant economic factors specified in 62062 and has established a mechanism for setting Class 1 producer prices, he must ensure that prices resulting from this mechanism are in reasonable relationship with class 1 prices paid in contiguous states.

Dairy Institute's petition asks the Secretary to follow the roadmap created by the Legislature in Chapter 2. First, as we testified earlier, Dairy Institute asks the Secretary to look at the three economic factors specified in 62062. Next, Dairy Institute has asked the Secretary to consider four additional relevant economic factors. The evidence and testimony Dairy Institute presented in Sacramento on May 3rd demonstrates that each of those seven economic factors indicates that California's current Class 1 formula no longer advances the purposes, policies and standards codified by the Legislature in Article 2. Dairy Institute believes that an evenhanded evaluation of these seven economic conditions requires a conclusion that California's current formula for setting Class 1 prices must be adjusted and that the changes it has proposed to that formula are both equitable and required.

Dairy Institute's Proposal

Each of the forgoing failures of the existing stabilization and marketing plans was examined and explained in great detail in our testimony from the May 3, 2005 Class 1 hearing in Sacramento. We have included that testimony as an attachment (Attachment 1) to this one and we will not reiterate all of the arguments that we made earlier; however, we refer the hearing panel to that attachment for the rationale and the evidence regarding our proposal and our assertions regarding the failures of the existing Stabilization and Marketing Plans to meet their legislative mandates. All of the failures of the existing plans stem from the fact that Class 1 prices are too high relative to the manufacturing classes of milk within California. Dairy Institute's proposal would reduce Class 1 prices in both Northern and Southern California, and in so doing would bring the current plans more in line with the requirements and guidelines set forth by the legislature.

Our proposal is relatively straight-forward. Dairy Institute proposes that the Commodity Reference Price (CRP) adjuster employed in the calculation of the Class 1 solids not fat and fluid carrier prices be changed from its current value of +$0.464 per hundredweight to a new value of - $0.416 per hundredweight. These changes should be made to both the Northern (Plan 44) and Southern (Plan 59) California Stabilization and Marketing Plans. This change amounts to an 88 cent per hundredweight reduction in the Class 1 price, and given the current Class 1 utilization in the pool (@ 15%) would result in a reduction to producer pool prices of about 13.2 cents per hundredweight.

The Class 1 Price Relationship With Manufacturing Class Prices Is Not Economically Sound Or Reasonable.

The spread between Class 1 and manufacturing class prices is too large, meaning that the prices for the various classes of milk are not in a reasonable and sound economic relationship to each other because of:

a. Reductions in Class 1 utilization
b. Low California milk production costs in relation to other areas
c. Too much Class 1 price enhancement on top of the traditional the cost-based justifications for Class 1 price differentials.

The most commonly used descriptor of the relationship between manufacturing milk class prices and Class 1 prices is the Class 1 differential. The Class 1 differential is calculated as the Class 1 price less the higher of the Class 4a or 4b price when such prices are calculated using the same sets of commodity values. Using the commodity prices employed in Class 1 pricing calculations from April 2000 through May 2005, the calculated Class 1 differential averaged $2.09 per hundredweight for Northern California and $2.36 in Southern California. The calculated differential we describe here is constructed in an analogous manner to the Class 1 differential in the Federal Orders. Just as the Federal Order Class 1 differential shows the relationship of Federal Order Class I prices to the higher of Federal Order Class III or Class IV prices, the differential we have calculated shows the relationship between California Class 1 prices and the higher of Class 4a or Class 4b prices. It is the appropriate differential to be used in making comparisons between California Class 1 prices and California manufacturing class prices. The differential described here should not be confused with the imputed California federal order differential, which is equal to the California Class 1 price less the federal order Class 1 price mover. This imputed differential compares California Class 1 prices to federal order manufacturing class prices and it had been used to determine changes in the relationship between California and Federal order Class 1 prices; however, it is of little relevance when attempting to determine the relationship between fluid and manufacturing class prices within California and is therefore not the appropriate differential to use in making these comparisons.

Class 1 Utilization Reductions

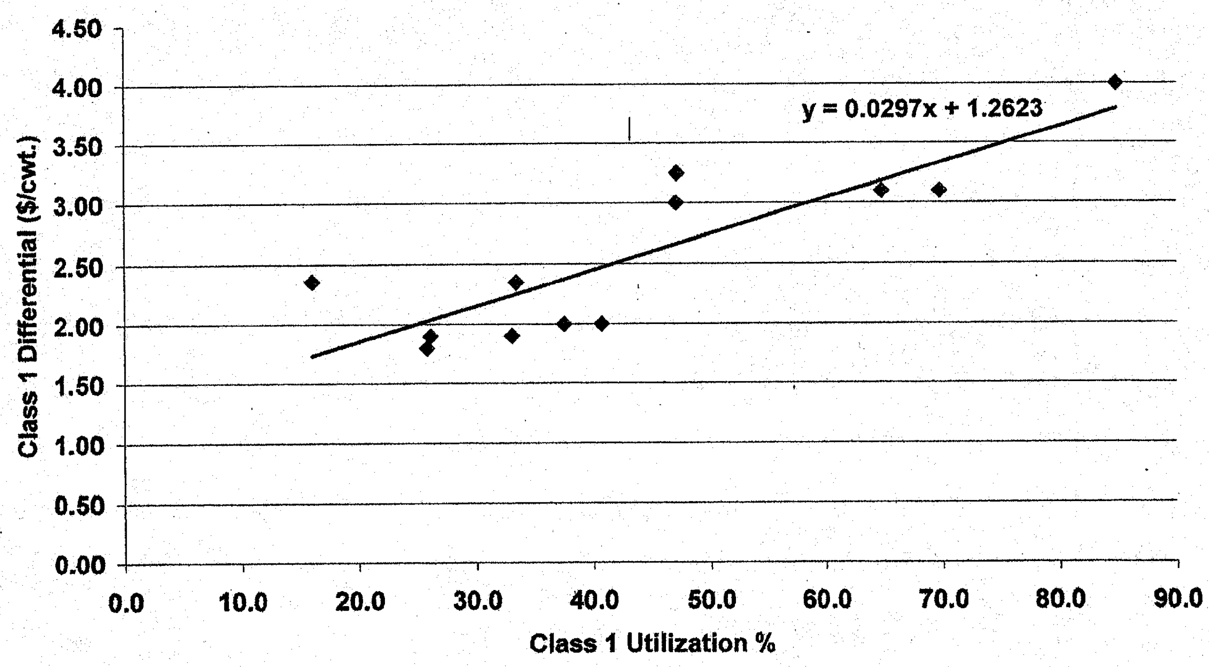
The class 1 utilization percentage in California has fallen well below that in all other markets, yet the price spread between fluid and manufacturing use prices is as large as markets that have significantly higher Class 1 utilization percentages. The attached table (Table 1) summarizes the average Class 1 utilization in 2004 for California and the Federal Orders along with the Class 1 price differential in each order. The data have been plotted in a scatter diagram, and the relationship between Class 1 differentials and Class 1 utilization was estimated using a liner regression (Figure 1).

Table 1. Class 1 Differentials and 2004 Class 1 Utilization in California and Federal Order Markets.

Region	Class 1 Differential $/cwt.	2004 Class 1 Utilization %
Florida	4.00	84.9
Appalachain	3.10	69.7
Southeast	3.10	64.8
Northeast	3.25	47.2
Southwest	3.00	47.1
Mideast	2.00	40.7
Central	2.00	37.5
Arizona-Las Vegas	2.35	33.4
Pacific Northwest	1.90	33.0
Western	1.90	26.1
Upper Midwest	1.80	25.8
California	**2.36**	***16.0***

Source: USDA Federal Milk Market Order Statistics, CDFA Dairy Hearing Background Resource.

Figure 1. Class 1 Differential v. 2004 Class 1 Utilization by Order, So. CA and Federal Orders



The estimated relationship predicts the California Class 1 differential that would be associated with a particular level of Class 1 utilization given the assumption that, on average, the Class 1 differentials in the Federal Orders are appropriate for their level of utilization. Using this relationship, and the current Class 1 utilization percentage in the California pool (which has hovered just under 15% so far this year), the predicted Class 1 differential for Southern California would be $1.71 per hundredweight, a reduction of $0.65 per hundredweight from the current Class 1 differential of $2.36 per hundredweight. I would point out that this estimation method yields a higher Class 1 differential than we estimated by examining Grade A conversion costs and the cost of drawing milk to deficit markets. The primary reason for this difference is that the federal order differentials contain more outright price enhancement than is appropriate for California given its market and industry structure. Nonetheless, the estimated relationship is evidence that California's current Class 1 differential is too high, and it clearly shows that the current Class 1 prices are not in reasonable relationship with prices in contiguous states when relevant market factors are considered.

Too Much Class 1 Price Enhancement Relative To Justifiable Costs

The agricultural marketing literature has noted several reasons for the existence of a Class 1 differential in regulated dairy programs. Specifically, the Class 1 differential is supposed to be sufficiently large to cover:

a. The cost of converting Grade B milk to Grade A milk and maintaining a Grade A milk supply
b. The cost of drawing milk to deficit markets for fluid uses
c. Price/Income enhancement for producers so that the supply of milk is adequate for stated uses.

Grade A conversion and maintenance costs

In our May 3rd testimony, we noted that the appropriate Grade A costs to be covered in the Class 1 differential are the costs producers would incur in maintaining their Grade A status. These costs are captured by the added annual inspection costs, and would be adequately compensated for by a Class 1 differential of 4 cents per hundredweight. However, we based our proposal regarding the Grade A differential on conversion costs incurred by smaller farms in the Midwest. Our proposal would more than cover any such associated costs on dairy farms in California. Our proposed Grade A portion of the differential is 94 cents per hundredweight, which represents a conversion cost of 15 cents per hundredweight divided by the California Class 1 utilization of 15.7%. Based on our estimate of what is actually necessary to ensure adequate Grade A supplies ($0.04/cwt.), our proposal for this portion of the differential provides dairymen with $0.90 per hundredweight of pure price enhancement.

Drawing milk to deficit markets

Southern California is the most deficit region of the state with respect to available milk supplies. Milk supplies in Kern County, combined with existing Southern California milk supplies, are adequate to provide for the region's Class 1 needs plus a reserve. The incentive needed to move milk from Kern County to Southern California can be obtained from the most recent Departmental survey of ranch to plant hauling costs (April 2004) is 48 cents, an amount derived from the cost of hauling from Kern county to Los Angeles (73 cents per cwt.) less a local haul cost of 25 cents per hundredweight (HE-8a). While some will no doubt argue that hauling costs have increased over the past year, it should be noted that in California, Class 1 differentials do not directly incentivize ranch to plant milk movements as is the case in Federal Orders; rather, they are a mechanism to fund transportation allowances, which are paid only the quantity of milk that needs to be moved that distance.

Since not all of Southern California's milk is being supplied from Kern county (there is still a good deal of milk that is much closer, located in the Chino basin), a 48 cent differential would not be needed on all Class on milk in order to provide sufficient funds to pay the necessary transportation allowances. Based on CDFA milk movement data (HE-2) about 65% of Southern California's Class 1 pool needs are being supplied by milk being shipped from Northern California (March 2004-February 2005 average monthly shipment of 150.5 million pounds divided by the Southern California monthly average Class 1 use of 232 million pounds over the same period.). Therefore, the amount of money necessary to fund these milk shipments could be obtained from a Class 1 differential of about 33 cents per hundredweight ($0.48 per cwt./0.65). As in the case with or Grade A cost calculation, the 48-cent portion of the differential for incentivizing the movement of milk to Class 1 uses is again a generous estimate, which would provide pure price enhancement to producers amounting to an additional 15 cents ($0.48 - $0.33) per hundredweight.

Price enhancement to producers

Based on the foregoing, the appropriate Class 1 differential for Southern California is certainly no higher than $1.42 per hundredweight (94 cents per hundredweight plus 48 cents per hundredweight), as our estimates of both the Grade A costs and the milk movement costs show that the differential components we have used cover more than the actual costs they represent. The proposed change in the Class 1 formula contained in Dairy Institute's petition results in a Southern California Class 1 price differential that averages $1.42 per hundredweight. Based on January 2000 through December 2004 price data, which showed that the average Class 1 differential in Southern California was $2.30 per hundredweight, a reduction in the Class 1 price of 88 cents per hundredweight would achieve the new Class 1 differential level ($2.30-$0.88=$1.42). The total pure price enhancement accruing to producers in our proposal is $1.05 per hundredweight, since the amounts actually needed for Grade A maintenance and drawing milk supplies to deficit markets amount only to $0.37 per hundredweight ($0.33 + $0.04). Given that we also advocate maintaining the current area differential of 27 cents per hundredweight between Northern and Southern California, the proposed Class 1 differential in Northern California is $1.15 per hundredweight.

<u>Producer Income Is More Than Sufficient To Generate And Adequate Supply Of Milk.</u>

We stated in our May 3rd testimony that our proposal would result in adequate supplies of milk for all uses. One producer group, the Alliance of Western Milk Producers, has suggested that current supplies are not adequate for all uses because dairy commodity prices and market prices for milk have been relatively high over the past year. Market prices are determined based on supply and demand in the national and international markets, not the relative balance of California supply and California fluid and manufacturing uses. California milk supplies <u>are more than adequate</u> for California fluid and manufacturing uses. To suggest, as the Alliance does, that the legislature intended for California's regulated price formulas to be increased every time there is a dairy product shortage (leading to higher dairy commodity prices) somewhere in the country or the world is ludicrous. Taken to its logical conclusion it suggests that the California legislature intended for California to be the sole supplier of dairy products to the world. This is a preposterous notion, and it is simply not physically possible. Such an intent would violate the legislative mandate that it is the policy of the state to promote, foster, and encourage the intelligent production and orderly marketing of market milk and to eliminate economic waste...(Sec. 61802(e)). Since the legislature would not contradict itself in such a manner, it is clear that the Alliance's definition of what constitutes "an adequate supply of milk for all uses" is incorrect.

Milk output growth of the magnitude we have seen in recent years has surpassed what is needed to "insure an adequate and continuous supply..." as required by Section 62062 (b). <u>If milk production continues to grow at current trend rates, the supply of milk will exceed the capacity of the state's dairy product plants in the near future, possibly as early as 2006. To bring the current Stabilization and Marketing Plans under compliance with this section, Class 1 prices must be reduced.</u>

<u>Pricing Standards Do Not Conform To Current Economic Conditions.</u>

Current Class 1 prices result in price enhancement that is not in the public interest. The low Class 1 utilization we have today means that for every $1.00 per hundredweight enhancement in the Class 1 price, producers receive only $0.15 per hundredweight. Because low Class 1 utilization requires extremely large enhancements in Class 1 prices in order to make a significant impact on producer income, it is not a very efficient means of meeting producer income requirements. We also noted that the closer the elasticities of the different classes are to each other, the less effective price discrimination is at enhancing producer income. We made reference to some evidence that suggests a relatively narrow difference in the price elasticities of fluid milk and cheese, the dominant manufacturing milk use. The growing importance of food service and food manufacturing demand for cheese may be contributing to the relatively low price responsiveness of cheese demand throughout the typical milk price range. Smaller differences among the elasticities of the various uses of milk mean that price discrimination is a relatively less effective tool for enhancing producer incomes.

<u>Prices To Consumers Are Not Fair And Reasonable .</u>

The current stabilization and marketing plans result in prices to consumers of fluid milk products that are not fair or reasonable. We noted that per capita fluid milk consumption had declined in California faster than in the rest of the United States. Because of California's increasing milk production, its rapidly declining milk consumption, its relatively low and declining Class 1 utilization, and the inefficiency of the Class 1 differential at enhancing the state's producer revenues, Class 1 consumers are bearing too heavy a burden for supporting producer income. Given the legislature's directive concerning milk supply (an adequate supply for all uses), producer income needs should be borne more equally among all the milk classes, since consumers of all milk product types benefit from the adequate supply that is generated by the combined income from milk sales to the various uses.

Despite California's low Class 1 utilization percentage and the state's stagnant Class 1 usage overall, the price charged to Class 1 milk users in California has not declined relative to the price charged manufacturing milk users. We have stated that one of the results of artificially high Class 1 prices, relative to manufacturing uses, has been continued erosion of per capita consumption of fluid milk. We did not mean to suggest that high Class 1 prices alone were responsible for the decline in per capita consumption, but that they were a contributing factor. The current policy is not sound because it negatively impacts Class 1 consumption in the face of a growing milk supply. California Class 1 consumers should receive some of the benefit of plentiful milk supplies in the state. Currently, they do not.

At past hearings, producer groups have offered testimony suggesting that consumers do not benefit from lower Class 1 prices. We note that producers usually point to the farm-retail price spread as evidence that consumers do not benefit when Class 1 prices are reduced. The farm-retail price doesn't really indicate anything about how or whether consumers benefit from lower Class 1 prices because it does not reveal anything about wholesale to retail price transmission. With regard to transmission of Class 1 milk price changes to the retail level, the evidence is clear that, in California at any rate, consumers do benefit from reductions in the Class 1 price. As the Department noted in the "Hearing Background Resource" for this hearing: "*California Milk Marketing Margins* by Hoy F. Carmen, Department of Agriculture and Resource Economics, University of California, Davis. Professor Carmen found "*...that there is a strong direct relationship between retail and farm level milk prices – retailers increase and decrease their prices equally in response to f.o.b. prices increases and to f.o.b. price decreases.*" The Department goes on to say that Professor Carmen's conclusion is partially born out by the relationship between the change in farm and the change in retail prices for San Francisco shown in Figure 9 of their exhibit (HE-8b). They note that the change in raw product cost explains 98% of the changes in retail prices at club stores, and 61% of the changes in prices at traditional retail stores. The 61% figure increases to 94% with lagged data, according to the Department. <u>Hence, it is clear that consumers will benefit from a reduction in the regulated Class 1 price, and the reduction we propose is needed to assure that prices to consumers are fair and reasonable.</u>

The Relationship To Prices In Surrounding States Is Not Reasonable

Current Class 1 prices are not in a reasonable relationship to prices in surrounding states. Contrary to the arguments of producer groups testifying at this hearing. The term reasonable relationship **does not** mean, "prices that are equal to (or nearly equal to, or in the vicinity of) those in other states." Regarding Section 62062.1 of the Food and Agricultural Code, producer representatives seem to be arguing that Dairy Institute's proposal would result in prices not being "reasonable relationship" with Class 1 prices in contiguous states, and would therefore be a violation of 62062.1. We disagree. Producers seem to take for granted that their view of what constitutes a reasonable relationship is somehow understood and accepted by all. This is a false assumption. We have made a case that under the plain meaning of the statute, a reasonable relationship can be any relationship for which there is a logical, justifiable ground of defense. Thus, the Department has wide latitude in determining what comprises a "reasonable relationship", and there is nothing in the legislative history that would suggest otherwise. In fact, the legislature specifically rejected the notion of tying California Class 1 prices in some sort of "formulaic" way to Class 1 prices in other states. It is conceivable that there might have been situations in the past where equality of Class 1 prices with contiguous prices would have been "reasonable." However, the change in market conditions, specifically the reductions in Class 1 utilization seen over the past few years and the other factors we identified in our May 3rd testimony, demonstrate that a "reasonable relationship" is one where Class 1 prices in California are substantially lower than prices in contiguous states (see Figure 1).

Failure To Foster Uniform Prices To Handlers

The current plans fail to foster uniform prices to processors competing in a marketing area. Exempt producer distributors (P-Ds) have an advantage in the marketplace because they incur no pool obligation on their exempt quota holdings. We gave evidence of the P-D advantage in our May 3rd testimony. The P-D advantage can be reduced if the Class 1 price differential is reduced, as we propose. The directives given by the legislature to the Secretary require such a reduction.

Failure Promote Orderly Marketing And Discourage Economic Waste

The Secretary is directed to consider other relevant economic factors in establishing Class 1 prices. The economic incentives in the marketplace cannot be ignored. The Department noted the following in its Statement of Determinations stemming from the February 1997 Stabilization and Marketing Plan hearings: "...Given the legislative declarations that it is not in the public interest to promote or encourage economic waste or inefficient marketing of milk, and that California has a plentiful supply of milk produced at the lowest cost in the nation, it is appropriate to question what public interest is being served by creating artificial high price signals which encourage milk shipments into California in both bulk and packaged form." We concur with the Department that the public interest is not served when economic incentives exist within the regulated market pricing system that cause, directly or indirectly, inefficient and disorderly movements of milk. <u>To eliminate such incentives for economic waste, the Class 1 price differentials should be reduced as we have proposed.</u>

<u>Other Concerns</u>

We refer the Department to Dairy Institute's May 3rd testimony regarding our concerns about the use of Federal Order price maps and transshipment models as bases for establishing Class 1 price levels in California. These models alone are not appropriate for determining the level of California's Class 1 price differentials.

Dairy Institute also wishes to address a further issue which has arisen in the course of these hearings. At least one witness has previously cited an October 1, 2004 letter from the Department denying Dairy Institute's September 24, 2004 Petition seeking a hearing to consider changes to the Class 1 formula. A portion of that letter stated: "California may not adopt regulations, the motivation of which is to handicap out of state shipments of milk into California." Witnesses have pointed to this communication, as well as a subsequent Class 1 petition by Dairy Institute as evidence that Dairy Institute's motive in this hearing is to advocate regulations designed to handicap out-of-state milk shipments. Such suggestions are unhelpful and inaccurate.

In neither of its earlier petitions did Dairy Institute propose any changes designed to "handicap" out-of-state milk shipments. Instead, as the Department's files will confirm, Dairy Institute has proposed that the Department exercise its regulatory authority to change the way in which California establishes the Class 1 price paid to California producers. Nothing in Dairy Institute's proposal was designed to, or would have had the effect of, improperly regulating or taxing milk in interstate commerce.

More significantly, it is unhelpful and disingenuous to suggest that Dairy Institute's "motive" in filing petitions for hearings to consider changes to the ways in which California sets milk prices, even if somehow improper (which we completely dispute) could somehow effectively taint final regulations resulting from those hearings. Such a suggestion overlooks the fact that the hearing process is specifically designed to elicit evidence, opinions, and even speculation from all interested parties. The suggestion also overlooks the fact that the Secretary, working in conjunction with the Department, has the ultimate responsibility of reviewing all testimony delivered at the hearing, considering other factors and issues identified in the Food and Agricultural Code, and then reaching a decision calculated to advance the policies and principles established by the Legislature. To suggest that a petitioner's improper motive might survive this regulatory gauntlet and manifest itself in final regulations is to suggest that both the Departmental staff and the Secretary lack even ordinary competence. Nothing could be further from the truth.

Other Proposals

We oppose the proposals of California Dairy Campaign (CDC), Western United Dairymen (WUD), and The Alliance of Western Milk Producers (Alliance). We again refer the Department to our testimony from May 3rd regarding our concerns with respect to these proposals.

Summary

We urge the Department to adopt our proposal. The current Class 1 pricing structure in California makes sense only if the sole goal of the program is producer income enhancement. The legislature directs the Department to balance the needs of producers, processors, and consumers in a manner such that the public interest is served. There is no evidence that adoption of our proposal will result in insufficient producer income to ensure adequate supplies of market milk. There is evidence, however, that adoption of our proposal will result in lower fluid milk prices to consumers and will put the Stabilizations and Marketing Plans back into compliance with their legislative requirements.

We want to note that we are concerned about deviations from standard hearing procedures that have occurred with the May 3rd hearing. Beginning with the pre-hearing workshop, these hearings have been conducted in a way that has limited both the amount of information exchanged among industry participants and the magnitude and quality of information in the hearing records. California's hearing process has been greatly strengthened by the detailed and substantive questions asked of witnesses by the Hearing Panel. The information generated by such questioning greatly enriches the hearing record and creates a body of evidence that enables policy makers to make better-informed decisions for the benefit of the industry and the public. We all lose when the procedures that we have come to rely on are abandoned by the Department. It has seemed to us that the Hearing Panel's questions at the May 3rd hearing were limited to questions of clarification. We hope this change will not be a precedent and that future hearings will evidence the procedures and characteristics we have all come to rely upon and expect.

As a final point, we wish to note that the Hearing Panel always does an excellent job of analyzing and evaluating the merits of the testimony presented at these hearings. While we have sometimes disagreed with the panel's conclusions stemming from past hearings, we respect their abilities and their capable analysis of dairy marketing issues. We again urge the Secretary to rely on the report and recommendations of the Hearing Panel. The Panel's expertise puts them in a unique position to evaluate the relative merits of the various presentations made here today.

We, the dairy industry, look to the Department to take leadership on crucial issues affecting the industry. We are not always able to get total (producer and processor) agreement on all issues. The Department, and its panel of experts, must take the lead in determining what is in the best long run interest of the industry in circumstances when industry consensus is difficult achieve.

Thank you for this opportunity to testify. I am willing to answer any questions you may have at this time. We also respectfully request that the Department grant us a period for the filing of a post-hearing brief.